



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

MEMO ENDORSED

November 20, 2019

By ECF and Hand Delivery

Honorable Valerie E. Caproni
United States District Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

USDC SDNY
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Re: *Natural Resources Defense Council, Inc., et al. v. U.S. Department of the Interior, et al.*, 18 Civ. 4596 (VEC), consolidated with *National Audubon Society, et al. v. U.S. Department of the Interior, et al.*, 18 Civ. 4601 (VEC), and *State of New York, et al. v. U.S. Department of the Interior, et al.*, 18 Civ. 8084 (VEC)

Dear Judge Caproni:

This Office represents defendants U.S. Department of the Interior (“DOI”), U.S. Fish and Wildlife Service, and Daniel Jorjani, in his official capacity (“Defendants”), in the three consolidated actions referenced above. Pursuant to the Court’s November 18, 2019 order, *see* Dkt. No. 62, and instructions from chambers staff, enclosed is a CD-ROM which contains the administrative record of the DOI concerning (1) Opinion M-37050, *The Migratory Bird Treaty Act Does Not Prohibit Incidental Take*, dated December 22, 2017; and (2) the Memorandum from the Principal Deputy Director of the Fish and Wildlife Service to the Service Directorate, with the subject “Guidance on the recent M-Opinion affecting the Migratory Bird Treaty Act,” dated April 11, 2018. If the Court would also like to have a copy of the administrative record in hard copy format, Defendants can provide a copy upon request.

Also enclosed is the DOI’s certification of the administrative record, which attaches an index of all of the Bates-numbered pages included in the administrative record, as well as an index of various documents that are readily available on Westlaw or Lexis—including cases, statutes, regulations, *Federal Register* documents, law review articles, and easily-searchable legislative history—which are part of the administrative record, but which are not included on the CD-ROM and are not part of the Bates-numbered record.

In light of the volume of material contained in the administrative record, Defendants respectfully request that the Court endorse this letter allowing Defendants leave to file the administrative record with the Clerk of the Court in hard copy format and via CD-ROM.

We thank the Court for its consideration of and attention to these matters.

Respectfully submitted,

GEOFFREY S. BERMAN
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Enclosures

cc (without enclosures):

All counsel of record via ECF only

Application GRANTED.

SO ORDERED.


11/20/2019

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE